

Guide to Split Estates in Oil and Gas Development

You may own a piece of land, but do you own everything underneath it?

Many landowners only own the surface, not the subsurface. This is called a **split estate**, and it occurs because previous owners retained ownership of the mineral rights when they sold the surface property.

The term “mineral rights” normally refers to subsurface rights to any mineral, including oil and natural gas rights. Mineral rights are property rights. Since 1923, state law has required the State of Idaho to reserve the mineral rights when state land is sold to a private party.

In a split estate, mineral rights are legally considered the dominant estate, meaning they take precedence over other rights associated with owning the surface. Therefore, the mineral right owner (or its lessee or its designated operator) can use as much of the surface estate as is reasonably needed to explore for and develop the reserved minerals within the land. This could result in surface-disturbing activities on your land.

Potential surface disturbances from oil and gas exploration are generally temporary and of relatively small magnitude. Exploration activities may include geophysical surveys, such as seismic reflection surveys, that may result in localized ground clearing, vehicle traffic, and positioning of equipment.

Typical activities during the drilling and development of an oil or gas well may include ground clearing and removal of vegetative cover, grading, drilling, managing fluids, vehicle and pedestrian traffic, and construction and installation of facilities. All of these activities are regulated by the Idaho Oil and Gas Conservation Commission

Does Idaho have laws protecting surface owners?

Yes. Idaho Code § 47-708 “Rights and Liabilities of Lessees,” identifies the rights of State lessees of mineral rights to prospect and mine subsurface minerals and also sets forth the lessee’s duties and liabilities for any damages caused to the improvements of the surface owner. Case law and common law likely provide the same protections for damages caused by oil and gas development.

Additionally, Idaho Administrative Code 20.07.02.110 (Conservation of Crude Oil and Natural Gas in the State of Idaho) provides for surface owner notification, and, if there is no surface use agreement, surface owner protection in the form of a minimum \$5,000 bond paid to IDL to safeguard against the surface owner’s potential loss.

You only own the surface of a split estate. What can you do?

Oil and gas interest owners typically conduct operations that minimize disturbances to the surface owner and his property and improvements.

It is common practice for oil and gas owners to enter into a **surface use agreement** with the surface owner. The agreement spells out what kinds of uses can occur on the surface in exchange for a promise to pay for such uses. The result is that the surface owner gets compensation that he is not otherwise legally entitled to receive, while the oil and gas interest owner gets protection from being held in trespass because of possible unreasonable use of the land, and both parties know exactly what can and can’t be done on the property.

How do you determine if you own the oil and gas beneath your land?

Read your property deed and research the land title records. If you want to find out who owns the mineral rights beneath your land, the first step is to find the deed to your property. The deed may state that ownership of your property is without any limitations or conditions. A deed will normally only mention mineral rights specifically if they are reserved, but this is not always the case.

Research mineral deeds, grants, and reservations. Go to the county, Idaho Department of Lands, and federal government offices to find out if there are mineral deeds, grants, or reservations related to your property. You will need a legal description of your land (this can be found in your deed or in the title document for your land).

Have a title search conducted by a land title or title insurance company. If your own research has not provided you with adequate information, then you can hire one of two main types of companies that provide information on property ownership: one that will create an abstract of title, and a second that provides title insurance. In both cases, these companies can research the legal history of property and perform extensive searches of public records including deeds, mortgages, and tax records. When you purchased your property, you may have hired a company to provide you with title insurance to prove that you had clear title to the land. During closing, the title company should inform the purchaser if there is a substantial likelihood that a separate mineral estate holds some or all interest in oil or gas, or other minerals in the property.

A standard title search may not include information on whether you own the mineral rights. Title companies may exclude research on mineral rights and other issues of con-

cern. If you have already done a title search for your property, refer to the exclusion section of the title policy. If “mineral rights” are mentioned as exclusions, then it is unlikely that the title search document will provide you with the information you need to determine if you own the oil and gas rights beneath your property.

If you are ordering a new title search, make sure you tell the title company to include all mineral rights in the title search in the form of a mineral title examination. While mineral reservations are generally included in a standard title search, there is typically an exclusion for unpatented mineral rights and for reservations or exceptions in patents or in statutes authorizing the patents (essentially, a land patent is the first conveyance of title ownership to land). In Idaho, all title companies should be capable of examining mineral right ownership. However, it is important to verify with the title company that they will examine specifically for all mineral ownership interests, including oil and gas interests. The title company should be

willing to “stand behind” their findings with mineral title insurance. Therefore, you should find out in advance whether or not the company is willing to provide mineral title insurance for their potential errors. Alternatively, you can ask a title company for a mineral guarantee report, which will disclose any mineral reservations (including oil and gas) found in the patents and statutes authorizing the patents, and in the “chain of title,” which is a list of all who have held title to the property since the land was first patented. In a mineral guarantee report, a mineral reservation (which includes oil and gas) indicates that the ownership of the minerals has been severed from ownership of the land. However, the interpretation of the mineral guarantee report can be complicated. Usually, if you order a mineral guarantee report from a title company, you may wish to take it to an attorney who can provide you with an opinion based on the findings in the report. Even if you get mineral title insurance, it is still advisable to get the legal opinion.

SPLIT ESTATE: Previous owners retained ownership of the mineral rights (including oil & gas) when they sold the surface property. Mineral rights are legally considered the dominant estate, and take precedence over the surface rights. The mineral right owner can use as much of the surface estate as is reasonably needed to explore for and develop the reserved minerals within the land. This could result in surface-disturbing activities on your land.

Surface Owner Protection from Oil & Gas Exploration and Drilling: Idaho Administrative Code IDAPA 20.07.02.110 provides procedures to compensate a surface owner for lost agricultural income and lost value of improvement directly caused by oil & gas exploration & production.

Surface and mineral owners will:	Attempt a good faith negotiation of a surface use agreement. This must address how the owner will be compensated.
In the absence of an agreement on surface damages:	<p>The mineral owner or designated lessee or operator must notify the surface owner of the intent to drill by certified mail at least 60 days prior to the commencement of the surface disturbing activities, unless otherwise agreed to by the surface owner. The notification must include a proposed surface use bond amount and a copy must be sent to IDL.</p> <p>If the surface owner disagrees with the mineral owner’s or operator’s proposed surface use bond amount, then the surface owner must send a written objection to IDL within 30 days of receiving the notification from the mineral owner or operator. The objection must contain their proposed surface use bond amount. Any objection filed will not delay the mineral owner’s or operator’s proposed start of surface disturbance activities.</p> <p>If a surface owner objects to the mineral owner’s or operator’s proposed bond amount, IDL will determine a surface use bond based on the information received from both the mineral owner or operator and the surface owner according to the procedures in IDAPA 20.07.02.110. The minimum surface use bond in all instances with no surface use agreement will be \$5,000 and will be paid in cash to IDL. When the mineral owner or surface owner objects to IDL’s proposed surface use bond, a hearing will be scheduled as soon as possible to determine the final bond amount.</p> <p>The IDL will hold the bond pending either: (1) a surface use agreement between the two parties that negates the need for the surface use bond, or (2)reclamation of the surface disturbance.</p> <p>The IDL may forfeit the bond upon the failure of the well owner or operator to reclaim the disturbed area in a timely manner, or upon failure of the parties to reach a surface use agreement, upon the completion of drilling operations.</p>

Oil & Gas Exploration mostly uses seismic reflection surveys (similar to ultrasound in medicine), sound waves bounced off underground rock formations. This provides valuable information about rock types and possible gases or fluids in rock formations. Surface damage is usually minimal.

Oil & Gas Exploration Seismic Survey Operators must: (see IDAPA 20.07.02.360)	<p>Meet with IDL staff.</p> <p>Apply for an IDL permit to conduct seismic operations.</p> <p>File a \$10,000 bond approved by IDL.</p> <p>Publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted, unless the survey is conducted within a permitted well or conducted by aerial surveys.</p> <p>Give notice in writing to landowners at least 30 days prior to commencement of field seismic operations.</p> <p>Notify IDL within five business days of commencement and completion of each seismic operation.</p>
--	---

Oil & Gas Drilling may include ground clearing and removal of vegetative cover, grading, drilling, managing fluids, vehicle and pedestrian traffic, and construction and installation of facilities.

Oil & Gas Drilling (see IDAPA 20.07.02.200)	Bonds for surface reclamation, and for the plugging and abandoning the well. Bonds for individual wells are \$10,000 plus \$1 per foot of planned well length. Blanket bonds for 10 wells or more range from \$50,000 to \$150,000 depending on the number of wells covered.
--	--